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REPRINTED FROM
"THE PENNSYLVANIA MAGAZINE OF HISTORY AND BIOGRAPHY."

PHILADELPHIA:
1889.

146939.
12/9/18.



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THE ORDINANCE OF 1787.

BY FREDERICK D. STONE.

IN the April number of this magazine for the year 1888 we printed some extracts from the "Life, Journals, and Correspondence of Manasseh Cutler," describing his visit to New York and Philadelphia in the year 1787, and took occasion to say that we could not agree with the views expressed elsewhere in the volumes, that in the formation of the Ordinance of 1787 for the government of the Northwest territory Dr. Cutler rendered an all-important influence. It was our intention to have returned to the subject long before this, and, now that it is again taken up, we find that it has been the theme of a number of essays and addresses called forth by the celebration in 1888 of the centennial anniversary of the settlement at Marietta under the auspices of the Ohio Company. These investigations have been so numerous that any further consideration of the matter may look like a work of supererogation; but in all that has appeared, that we have met with, the same conclusion has been reached, that when Dr. Cutler visited New York in July, 1787, to negotiate for the purchase of a tract of land for the Ohio Company, he shaped the Ordinance adopted by Congress on July 13, 1787, for the government of the Northwest territory. Some indeed go so far as to argue that Dr. Cutler brought the Ordinance with him from New England and made the adoption of certain provisions found in it a *sine qua non* in the purchase of land.

The most thorough piece of work called forth in this discussion is the address by John M. Merriam, Esq., before the American Antiquarian Society, entitled "The Legislative History of the Ordinance of 1787," in which he shows that nearly every distinctive feature of the Ordinance was

before Congress, at one time or another before it was framed. Towards the close of his argument, however, Mr. Merriam falls in line with the other investigators, and after quoting from the diary of Dr. Cutler, describing a visit he paid to General Rufus Putnam previous to his journey to New York, Mr. Merriam says, "These passages from Cutler's diary show conclusively that he went to New York armed with great power, and for definite purposes which had been discussed and agreed upon with Rufus Putnam before he started. The precise articles in the final Ordinance which were due to the foresight and wisdom of Putnam and Cutler cannot now be precisely pointed out. It seems probable, however, in view of the earlier stand taken by Putnam and Pickering and their associates, that provisions for the support of religion and education, and the prohibition of slavery, were among the terms of the negotiation. It is only upon this supposition that the readiness of Congress to agree upon the sixth article (that prohibiting slavery) can be explained."

The Hon. George F. Hoar, in his oration delivered at Marietta, April 7, 1888, after reviewing the whole subject, said: "From this narrative I think it must be clear that the plan which Rufus Putnam and Manasseh Cutler settled in Boston was the substance of the Ordinance of 1787. I do not mean to imply that the detail or the language of the great statute was theirs. But I cannot doubt that they demanded a constitution, with its unassailable guarantees for civil liberty, such as Massachusetts had enjoyed since 1780, and such as Virginia had enjoyed since 1776, instead of the meagre provisions for a government to be changed at the will of Congress or of temporary popular majorities, which was all Congress had hitherto proposed, and this constitution secured by an irrevocable compact, and that this demand was an inflexible condition of their dealing with Congress at all."

Dr. William F. Poole, in his address delivered as president of the American Historical Association, at a meeting of that body at Washington, December 26, 1888, after re-

viewing the history of the Ordinance of 1787, summed the matter up in the following language :

“ In view of its sagacity and foresight, its adaptation for the purpose it was to accomplish and the rapidity with which it was carried through Congress, the most reasonable explanation, as it seems to me, of the origin of the Ordinance is, that it was brought from Massachusetts by Dr. Cutler, with its principal and main features developed ; that it was laid before the land committee of Congress on July 9 as a *sine qua non* in the proposed land purchase, and that the only work of the Ordinance Committee was to put it in a form suitable for enactment. The original draft may have been made by either of the eminent men who were the directors of the Ohio Company,—Rufus Putnam, Manasseh Cutler, or Samuel Holden Parsons,—but more likely was their joint production. Dr. Cutler says that on the day he left Boston he met General Putnam and ‘settled the principles on which I am to contract with Congress for lands, on account of the Ohio Company.’ In passing through Middletown, Conn., on his way to New York, he spent one day with General Parsons, and says, in his journal, ‘It was nine o’clock this morning before General Parsons and I had settled all our matters with respect to my business with Congress.’ They were the persons most interested in the enactment of such an Ordinance ; and without it their scheme of Western settlement would have failed. The New England emigrants must feel that they were taking with them to the Northwest their own laws and institutions. Hence the draft was made largely from the Massachusetts Constitution of 1780, which these settlers had helped to frame. By this constitution slavery was abolished, personal rights secured, institutions of religion and education fostered, and the most advanced principles in the settlement of estates and the administration of justice established. Mr. Dane, as the Massachusetts member of the committee, and most familiar with its laws, was the person to whom the duty of writing the final draft and reporting it to Congress would naturally be assigned.” Mr. Dane, Dr. Poole says, in another part

of his address, was the "scribe of the committee," and again, "Mr. Dane's record does not favor the theory that the Ordinance was his."

The editor of the life of Cutler, while treating the matter more generally, and endeavoring to trace the idea of the erection of a State in the Western territory and its government from its earliest inception, is scarcely less positive in the opinion he expresses that nearly every distinctive feature in the Ordinance was so in accord with the known sentiments of Cutler and his associates that it is obvious that these features were the result of their influence, and that the Ohio Company of Associates was organized "for the purpose of carrying into effect the long-cherished objects connected with their future homes." Dr. Cutler, he continues, in dealing with Congress, "kept steadily in view the two great objects of his mission: one was to procure land upon terms that would be acceptable to the Associates; the other to secure such organic law as would make the new State a congenial home for himself and his neighbors." And again, "It was just as necessary to yield to the wishes and plans of the Associates in the governmental system that was to be imposed upon their future homes as it was to meet their views in regard to land purchase." And "When Dr. Cutler placed this scheme before Congress he could appeal honestly and urgently for the establishment there of such civil and social institutions as would meet his own wants and those of his neighbors as pioneer settlers."

The Rev. Edward Everett Hale, in an address at Marietta, after asserting that Dr. Cutler "succeeded in doing in four days what had not been done in four years before," said, "What was the weight which Manasseh Cutler threw into the scale? It was not wealth; it was not the armor of the old time. It was simply the fact, known to all men, that the men of New England would not emigrate into any region where labor and its honest recompense is dishonorable.

"The New England men will not go where it is not honorable to do an honest day's work, and for that honest day's work to claim an honest recompense. They never have

done it, and they never will do it; and it was that potent fact, known to all men, that Manasseh Cutler had to urge in his private conversation and in his diplomatic work. When he said, 'I am going away from New York, and my constituents are not going to do this thing,' he meant exactly what he said. They were not going to any place where labor was dishonorable, and where workmen were not recognized as freemen."

Before entering into any argument or expressing any dissent to the above views we will endeavor, for the benefit of those unacquainted with the facts of the case, to give briefly and impartially the essential portions of the evidence connected with the history of the "great Ordinance."

As early as 1783, when the army of the Revolution was about to be disbanded, a number of officers from Massachusetts, New Hampshire, Connecticut, New Jersey, and Maryland petitioned Congress for a grant of land on the Ohio, on which they proposed to settle. It was their intention to establish a "new State," and for this object an agreement was drawn up, one clause of which provided for the exclusion of slavery from the State to form an essential and irrevocable part of the constitution. This, it is believed, was the work of Timothy Pickering, who, with Rufus Putnam, was active in forwarding the proposed settlement. The company also hoped to obtain a grant of land for the support of the ministry and schools. The Western territory, however, had not at that time been ceded to Congress by the several States claiming it, and nothing was done in the matter.

In 1784, after Virginia had ceded her right to the Western territories to the United States, a report was presented to Congress by a committee appointed to prepare a plan for the temporary government of the Western territory. This is known as Jefferson's plan, as it was drafted by him. It provided for the government of the territory ceded or to be ceded by the individual States, whensoever the same shall have been purchased of the Indian inhabitants and

offered for sale by the United States. By it the territory ceded was divided into ten States, and each one was enabled to adopt the constitution of any of the original States for its temporary government, subject to such amendments as a Legislature might suggest. Each State, thus organized, could send a member to Congress, with the right of debating, but not of voting, and upon gaining a population of twenty thousand was to be admitted into the Union under a permanent constitution, and to full representation in Congress when its population should equal that of the least numerous of the original States. It provided that both the temporary and permanent constitutions of the States be established on the principles that they should forever remain a part of the United States, and that their governments should be republican in form; that they should be subject to the Articles of Confederation the same as the original States were, and obliged to pay their share of the Federal debt as apportioned by Congress. They were not to interfere with the primary disposal of the soil by the United States, and under the temporary government the lands of non-residents were not to be taxed higher than those of residents.

The articles of this Ordinance were made a compact between the original States and the States it was proposed to form. In Jefferson's original report the following clause was made one of the principles on which the State constitutions should be formed, and a part of the compact: "That after the year 1800 of the Christian era there shall be neither slavery nor involuntary servitude in any of the said States, otherwise than in punishment of crimes whereof the party shall have been duly convicted to have been personally guilty." It was, however, stricken out by Congress, and the Ordinance as amended remained in force until it was repealed by the final clause of that of 1787.

On March 8, 1785, Timothy Pickering wrote to Rufus King, then in Congress, earnestly protesting against the admission of slavery into the Western territory. "For God's sake, then," he wrote, "let one more effort be made to prevent so terrible a calamity! The fundamental constitutions

of those States are yet liable to alterations, and this is probably the only time when the evil can certainly be prevented." In the same letter he said, "I observe there is no provision made for ministers of the Gospel, nor even for schools and academies, though after the admission of slavery it was right to say nothing about Christianity."

Eight days after this letter was written, King offered the following resolution in Congress: "That there shall be neither slavery nor involuntary servitude in any of the States described in the resolves of Congress of the 23d of April, 1784, otherwise than in punishment of crimes, whereof the party shall have been personally guilty; and that this regulation shall be an article of compact, and remain a fundamental principle of the constitutions between the thirteen original States, and each of the States described in the said resolve of the 23d of April, 1784."

The resolution was referred to a committee of three, of which King was chairman, his colleagues being Howell and Ellery, of Rhode Island. Their report was presented on April 6. It went back to Jefferson's proposition of 1784, prohibiting slavery after the year 1800, and coupled with it the fugitive slave clause as subsequently incorporated in the Ordinance of 1787. Its operation was confined to the proposed States. It was to be considered on the 14th of April, but a land ordinance was then being formed by Grayson, who on May 1 wrote to Madison that King would reserve his resolution prohibiting slavery in the new States until the land ordinance was passed. King's resolution does not appear to have received further attention. The land ordinance, that Grayson spoke of, as first framed reserved the central section of each township for the support of schools, and the one north of it for the support of religion, but as the act passed on May 20, the provision for the support of religion was omitted.

In 1786 a committee was appointed to report a temporary government for the "Western States." The object was to supply a uniform temporary government for the new States, in which the persons and rights of settlers would be pro-

tected, in place of permitting the citizens to select the constitution and laws of one of the older States and adapting it to their purposes by amendments. Monroe was chairman of the committee, and its report bears his name. It recommended a redivision of the territory as soon as the consent of the individual States that ceded it had been obtained. It proposed that Congress should appoint a governor, a council of five members, and a secretary for the territory or States. The duties of these officers were defined. It also provided for a court of five members, who should have common-law and chancery jurisdiction, and an existing code of laws was to be adopted to suit the occasion. When a population of a certain size was reached by a State, a House of Representatives was to be chosen to act with the governor and council, and from that time until the State was fully represented in Congress it could maintain a sitting member. The limit of the temporary government was fixed as in Jefferson's plan. Nearly all of its provisions were adopted, but the clause making it a compact binding on both the old and new States was omitted. The plan as presented to Congress on May 10 was a mere outline, and it was recommitted. Before it was completed, petitions were received from the inhabitants of the Western territory, praying for the establishment of a government that would make some provisions for both criminal and civil justice. Monroe's colleagues were Johnson, of Connecticut; King, of Massachusetts; and Kean and (Charles) Pinckney, of South Carolina. Before the committee had completed its report, Monroe, King, and Kean were succeeded by Melancthon Smith, of New York; Henry, of Maryland; and Dane, of Massachusetts. The committee thus formed, of which Johnson was chairman, presented its report on the 21st of September. It was an elaboration of Monroe's plan. It provided for a governor, council, secretary, a court, and the adoption of a code of laws. The duties of the officers were defined, and were about the same as Monroe proposed. The court was to consist of three members. A House of Representatives was to be elected as soon as five thousand

free male adults resided within a district. The qualifications for a representative were based on Monroe's report. The inhabitants were to pay part of the Federal debts, contracted, or to be contracted, as the citizens of the other States, and were entitled to the benefits of the act of *habeas corpus* and of the trial by jury. No provision was made for a non-voting member in Congress, and the States could not be admitted to full representation until their population was equal to one-thirteenth part of the citizens of the original States and the consent of Congress. Like Monroe's plan, it contained no clause making it a joint compact between the States, as proposed by Jefferson.

It was discussed on the 29th, and then all sight is lost of it until the 26th of April, 1787, when it was presented by the same committee to the new Congress. It reached a second reading on May 9, and was made the order of business for the 10th. On that day its consideration was postponed, and on the 12th it was found that so many members had left New York to attend the Federal Convention in Philadelphia that a quorum did not attend. No business was transacted after that until July 4.

While the attention of Congress was thus directed to the importance of furnishing a more efficient form of government for the Western territory, than the Ordinance of 1784, events elsewhere show that the subject of Western emigration was being seriously considered.

In January, 1786, Rufus Putnam and Benjamin Tupper, two of the signers of the petition to Congress asking for a grant of land in 1783, issued a card in a newspaper of the day, inviting the Massachusetts soldiers who were entitled to land in the Western territory, under an act of Congress, to meet together and organize an association to be known as The Ohio Company, to form a settlement in the Ohio country. The meeting was held on March 1, and articles of agreement were entered into, one of which provided for "the purchase of lands in some one of the proposed States northwesterly of the river Ohio, as soon as those lands are surveyed and exposed for sale by the commissioners of Con-

gress, according to the ordinance of that honorable body, passed the 20th of May, 1785, or on any other plan that may be adopted by Congress not less advantageous to the company." The scheme was well received, and attracted wide attention; but it was found that under the land ordinance of May 20, 1785, it would not be possible for the company to purchase a compact body of land, and the price asked by Congress was considered too high. To overcome these difficulties, on March 8, 1787, a committee composed of General Samuel Holden Parsons, General Rufus Putnam, and the Rev. Manasseh Cutler, was appointed to make application to Congress "for a private purchase of land," or, in other words, for a purchase on terms different from those proposed in the ordinance.

Parsons was selected to bring the matter before Congress, and on the 9th of May he presented his memorial to that body. Before it was acted upon, however, so many members of Congress absented themselves to attend the Federal Convention in Philadelphia that it was impossible to obtain a quorum, and he returned to his home in Connecticut. The proposition he made to Congress did not, it appears from a letter of Cutler, meet with the approval of the company, as they did not think well of the location which he proposed. Suspicions were indeed excited that General Parsons might have views separate from the interest of the company, and it was decided that as soon as Cutler learned that a quorum of Congress had assembled he should attend as agent of the company in place of Parsons. In the latter part of June he prepared to visit New York. On June 25 he was at Cambridge, and records in his journal that he rode to Boston, "conversed with General Putnam. Received letters. Settled the principles on which I am to contract for lands on account of the Ohio Company. . . . Left Boston for Dedham half-after six."

On the evening of the 30th he reached the home of General Parsons. The next day being Sunday, he preached for Mr. Huntington, and spent the afternoon with him, and on July 2 he recorded: "It was 9 o'clock this morning before

General Parsons and I had settled all our matters with respect to my business with Congress."

On July 5 he arrived in New York, and on the 6th he says: "At 11 o'clock I was introduced to a number of members on the floor of Congress chamber in the City Hall by Colonel Carrington, member from Virginia. Delivered my petition for purchasing lands for the Ohio Company, and proposed terms and conditions of purchase. A committee was appointed to agree on terms of negotiation and report to Congress.

Monday, July 9, "Attended the Committee before Congress opened." The same day he dined with some clergymen at Dr. Rodgers's. "It was with reluctance," he says, "that I took my leave of this agreeable and sociable company of clergymen, but my business rendered it necessary. Attended the committee at Congress Chamber. Debated on terms, but were so wide apart that there appears little prospect of closing a contract." On the same day Congress referred the report, that had been interrupted on its third reading on May 10, to a new committee, consisting of Carrington, Dane, Richard Henry Lee, Kean, and Smith.

July 10. "This morning," writes Cutler, "another conference with the committee. . . . As Congress was now engaged in settling the form of government for the Federal territory, for which a bill had been prepared and a copy sent to me, with leave to make remarks and propose amendments, and which I had taken the liberty to remark upon, and to propose several amendments, I thought this the most favorable opportunity to go on to Philadelphia. Accordingly, after I had returned the bill with my observations, I set out at 7 o'clock, and crossed North River to Paulus Hook."

The Ordinance Committee made its report on July 11. It was read a second time on the 12th and a third time on the 13th, when it finally passed. This was the great Ordinance. It provided that the territory northwest of the Ohio River, while under temporary government, should be one district, to be divided into two when found necessary. It provided for the distribution of estates of residents and non-

residents dying intestate, a widow to receive one-third of the personal estate and a life-interest of one-third of the real estate, the remainder being equally divided between the children or their heirs. From Johnson's report was taken the proposition of appointing a governor, council, secretary, and court, nearly the same language being used in defining their duties. A House of Representatives was also to be chosen when the population of a district reached five thousand. A delegate to Congress, with the right of debating but not of voting, as proposed by Jefferson and Monroe, was conceded to the States until admitted to full representation.

That portion of the Ordinance which related to the time when the States would be under a temporary form of government was followed by six articles which it declared should be considered as a compact between the original States and the people and States in the territory, and to forever remain unalterable unless by common consent. This idea was taken from Jefferson's report of 1784.

The first and second articles were evidently copied from the Bill of Rights of one or more of the original States. They secured to the people civil and religious liberty, trial by jury, and the benefit of the writ of *habeas corpus*. Here it was also said that no law ought ever to be made or have force in the territory that should interfere or affect private contracts or engagements previously formed.

The third declared that religion, morality, and knowledge are necessary for good government and the happiness of mankind, and schools and the means of education should forever be encouraged. It also provided that good faith be observed towards the Indians.

The fourth article contained, in substance, the six provisions in Jefferson's report, together with that securing navigation of the waters leading into the Mississippi and the St. Lawrence.

The fifth provided for the division of the territory into not less than three nor more than five States. When a State contained sixty thousand free inhabitants its delegates were to be admitted into Congress on an equal footing with

those of the original States. Its permanent constitution was then to be formed, which was to be republican, and in conformity with the principles of the Ordinance.

The sixth article was that which forever prohibited slavery in the territory. The language used was that of King's original resolution, coupled with the fugitive slave clause, taken from the report of the committee to which his resolution had been referred. This article was added on the second reading of the bill.

The most minute contemporaneous account we have of what was done in Congress while the Ordinance was being considered is in a letter from Nathan Dane to Rufus King, then in Philadelphia, dated July 16, 1787. In it he enclosed him a copy of the act, and said, "We have been employed about several objects, the principal of which have been the government enclosed and the Ohio purchase; the former, you will see, is completed and the latter will probably be completed to-morrow. We tried one day to patch up M.'s p system of W. government, started new ideas and committed the whole to Carrington, Dane, R. H. Lee, Smith, and Kean. We met several times, and at last agreed on some principles; at least Lee, Smith, and myself. We found ourselves rather pressed. The Ohio Company appeared to purchase a large tract of the federal lands—about six or seven millions of acres—and we wanted to abolish the old system and get a better one for the government of the country, and we finally found it necessary to adopt the best system we could get. All agreed finally to the enclosed plan except A. Yates. He appeared in this case, as in most others, not to understand the subject at all." [Mr. Dane then gives his views on the division of the territory and the population necessary for the admission of a State, and continues], "When I drew the Ordinance (which passed a few words excepted as I originally formed it), I had no idea the States would agree to the sixth article prohibiting slavery, as only Massachusetts, of the Eastern States, was present, and therefore omitted it in the draft; but finding the house favorably disposed on this subject, after we had completed the other

parts I moved the article, which was agreed to without opposition. We are in a fair way to fix the terms of our Ohio sale, etc. We have been upon it three days steadily. The magnitude of the purchase makes us very cautious about the terms of it, and the security necessary to insure the performance of it.”¹

The day after the letter was written, Dr. Cutler returned to New York from Philadelphia, and renewed his negotiations with Congress, and it was not until the 19th that he was furnished with a copy of the Ordinance. “It is,” he wrote, “in a degree new modeled. The amendments I proposed have all been made except one, and that is better qualified.” It was regarding Congressional taxation and representation.

This in brief is all the contemporaneous evidence there is, and the reader has before him an epitome of everything of that character on which the conclusion is based that Dr. Cutler and his colleagues were virtually the authors of the Ordinance of 1787. In reviewing it, we wish it distinctly understood that we would gladly accord to Dr. Cutler all the honor that has been claimed for him were it not that we consider such a verdict at variance with the truth of history and unjust to many others who did much to create the Ordinance.

The Ohio Company was without doubt the outcome of the proposition that was made by the officers of the army in 1783 to establish a new State in which slavery should be unknown and in which religion and education should be encouraged, as some of the men prominent in the old scheme were prominent in the new. The circumstances, however, under which the Ohio Company was formed were very different from those that existed in 1783. Then there were no provisions for the government of the territory or for the sale of land, but in 1784 a resolution for the former passed Congress, and in 1785 an ordinance for the latter was adopted. Consequently, when the Ohio Company was formed it did not propose to establish a new State, but to

¹ Bancroft's “History of the Constitution,” Vol. II. p. 430.

purchase land in one of those that it was proposed to erect under the resolution of April 23, 1784, and their purchase was to be made in accordance with the land ordinance of May 20, 1785.

There is nothing but argument to support the assertion that the government of the territory was the subject of conversation between Cutler and Putnam and Cutler and Parsons when the good doctor was on his way to seek an interview with Congress. This argument is based on the entries in Cutler's diary that with Putnam he settled the principles on which he was to contract for lands, and that it was nine o'clock on the morning of July 2, before General Parsons and he had settled all matters with respect to his business with Congress. We do not see that the language here used indicates that anything but pecuniary matters were the subject of discussion, and to assert otherwise is, we think, going beyond safe historical conclusions. The interviews, it will be noticed, were brief. With Putnam Cutler spent but the portion of a day; with Parsons he remained longer, but the greater part of the time being Sunday was occupied in preaching for and visiting Mr. Huntington. And here let us ask, Which is the most probable, that this instrument, so admirably suited for the work it was to perform, whose wisdom has called forth such unstinted praise, and which exercised so powerful an influence in shaping the destinies of the country,—which is the most probable, that this should have been the result of the hasty visits that Cutler paid to Putnam and Parsons, or the work of a deliberative body, appointed for the purpose, composed of men some of whom had already given the matter serious attention, and all more or less familiar with the character of the work required, having at their command the archives of Congress containing the record of all that Congress, or the committees of Congress, had ever done in the matter?

There is not a scintilla of evidence that Dr. Cutler ever made the adoption of what are claimed as his views in the ordinance of 1787 a *sine qua non* in the purchase of land. Great stress has been laid upon the frequent mention made

in his diary of his conferences with the committee, but the committee thus alluded to was the one to which his memorial for the purchase of land had been referred. He makes no mention of the committee having the ordinance for the government of the territory in charge. He merely says Congress was now engaged in settling the form of government for the Federal territory.

When Dr. Cutler returned to New York after visiting Philadelphia he renewed his negotiations for the purchase of land. On several occasions he despaired of bringing them to a successful conclusion, and threatened to withdraw his offer and purchase of some of the States having unoccupied land for sale. These threats the Doctor confessed were only "bluff," but it has been argued that they were to induce Congress to incorporate his views in the Ordinance for the government of the territory. Nothing can be farther from the truth. When Dr. Cutler returned to New York on the 17th of July the Ordinance was a law, and after its final passage no attempt was made for years to alter it in any way whatever.

The strongest evidence there is to show that Dr. Cutler exercised any influence in the formation of the Ordinance of 1787 are the entries in his diary that a draft of the plan proposed for the government of the territory was sent to him and he was invited to make remarks on it and propose amendments; that he did so, and after the final passage of the Ordinance found that with one exception all that he had suggested had been incorporated in it. Sixty-five years after the Ordinance had passed, Dr. Cutler's son said that his father had told him in the winter of 1804-5 that that portion relating to the prohibition of slavery had been prepared by him. A copy of the Ordinance is also said to have been seen in the papers of the Ohio Company, with a memorandum on it that the provisions relating to religion, education, and slavery were inserted at Dr. Cutler's instance. This is not good historical evidence; but suppose it all true, does it show anything but that he suggested what had been again and again before Congress for its consideration?

It is also claimed that it was absolutely necessary for the success of the undertaking that the law for the government of the territories should be in perfect accord with New England ideas, and that New England men would not have gone there if slavery had not been prohibited and civil and religious liberty secured as they were under the Massachusetts constitution of 1780. Unfortunately for the argument, the Association entered into by the members of the Ohio Company contradict it. The company was formed March 3, 1786, to purchase land in the Ohio country under the land ordinance of May 20, 1785. No provision was made for the purchase of land anywhere else, and at that time the territory was under the government of Jefferson's resolution of 1784, and by it (as passed) slavery was not prohibited or civil and religious liberty secured.¹ On May 30, 1787, Putnam and Cutler, writing to Sargent, said, if they could not secure the land they had in view, "we think of giving up the idea of making a purchase as a company." Nowhere in their correspondence, or in the journal of Cutler, is there the slightest hint that the government of the territory, or the admission of slavery into it, would influence their action, nor in the pamphlets issued by the Ohio and Scioto Companies do we find this feature of the Ordinance dwelt upon as one that would encourage emigration.

So far from Dr. Cutler's considering the prohibition of slavery in the territory an essential matter that would influence him in purchasing land of Congress, it does not appear to us that it had any weight with him whatever. If it had been otherwise we do not believe he would have

¹ It was well, indeed, for the future of the Northwest territory that the question of admitting slavery into it was not allowed to rest on the uncertain language of the Massachusetts constitution of 1780. The only clause in it touching on slavery is the first article of the Declaration of Rights, declaring that "all men are born free and equal, and have certain natural essential and inalienable rights." The same clause is to be found in the constitutions of several of the other States and in the Declaration of Independence. But nowhere else was the construction placed on it that it abolished slavery, and it was not until 1783 that that conclusion was reached in Massachusetts.

chosen the very time the question was coming up before Congress for consideration to have left New York and visited Philadelphia. Dr. Poole acknowledges this, but thinks that Dr. Cutler knew the disposition of the committee and of Congress, and was confident that the Ordinance would contain the article prohibiting slavery. Setting aside the improbability of Dr. Cutler being able to obtain the sense of Congress on a bill that had not been framed, or of his attempting such a piece of lobbyism, we have incontrovertible evidence that when the Ordinance was presented to Congress the article prohibiting slavery was not in it. Dr. Poole thinks that the article was agreed upon in the committee, and was omitted by Dane, who *restored* it when on the second reading he found the House would consider it favorably. This is supported by the language of Dane's letter to King of July 16, which reads: "When I drew the Ordinance (which passed a few words excepted as I originally formed it), I had no idea the States would agree to the sixth article prohibiting slavery, as only Massachusetts, of the Eastern States, was present, and therefore omitted it in the draft; but finding the house favorably disposed on this subject, after we had completed the other parts I moved the article, which was agreed to without opposition." Before writing this, however, Dane said that the subject of the government of the Western territory had been discussed by Congress, that new ideas had been started and the whole sent to a committee. That the members met several times, "and at last agreed upon some principles." Now, if it had been decided in the committee to report the article on slavery, is it probable that Dane would have taken the responsibility of omitting so important a feature? Taking Dane's entire letter into consideration, it conveys the idea to our mind that the matter was called to the attention of the committee, and that it was either decided to omit it, or it was left an open question, and that Dane acted on his own responsibility.

With regard to the willingness of Congress to exclude slavery from the Northwest territory in 1787, after having

voted down Jefferson's resolution in 1784, the reason is clear so far as the earlier vote is concerned. Jefferson's ordinance was for the government of territory ceded, or to be ceded, to the United States by the individual States. His first draft provided for the division of territory as far south as the thirty-first degree of latitude, which would have included all of the present States of Kentucky, Tennessee, Alabama, and Mississippi. As enacted, only the territory north of the Ohio was divided into States, but the words "ceded or to be ceded" were allowed to remain. The Ordinance of 1787 was only for the government of the territory northwest of the Ohio River.¹

From this it is obvious that the Southern States would not vote for Jefferson's proposition because it would have prohibited slavery in the Southwest when that country should be ceded to the general government, but when and why they were willing to accept the Ohio River as the division between slave and free territory is not so clear. That they would have done so in 1784 is doubtful. The next year, when King proposed to at once prohibit slavery north of the Ohio, the delegates of every State south of Maryland in Congress voted against it with the exception of Grayson of Virginia. Maryland gave two votes in its favor and one opposing it. Every State from there north (with the exception of Delaware, which was not represented) voted unanimously in favor of the proposition. From this it will be seen that at that time party lines were in accord with geo-

¹ Its title was copied from the amended title of Johnson's ordinance, which at first read, "For the Temporary government of the Western Territory of the United States." Amended, it read, "For the Temporary Government of the United States Territory North West of the Ohio River," and so read the Ordinance of 1787 with the exception of the word temporary. Jefferson's proposition has been criticised by writers when considering the Ordinance of 1787, because it permitted slavery to exist in the Northwest until 1800, and it has been argued that to have allowed the institution to take root in the territory would have been a fatal mistake. The fact appears to have been overlooked that *it* was intended to have had effect over the Southern territory, where slavery did exist, and it is probable the sixteen years were allowed to permit the citizens to prepare for the change.

graphical lines. When King's resolutions had been altered so as to permit slavery in the Northwest until the close of the century, Grayson wrote, "I expect seven States may be found liberal enough to adopt it." About the same time, however, Charles Thomson, the secretary of Congress, said in a letter to Richard Peters that there was great dissatisfaction "on account of the backwardness in the Southern States to cede to the United States their claim to Western lands. And now it seems the measures necessary to be taken to render useful the cession and purchases made, are to be obstructed by men of the South, because the East and North wish to keep slavery out of the new States."

From the first agitation of the question, there were men in the South like Jefferson and Grayson, who would gladly have prohibited slavery, not only in the Northwest territory but in any territory that should ever come under the control of Congress. So also, there were Southerners like Carrington who with wonderful foresight saw, in the sale to the Ohio Company, the "means of introducing into the country, in the first instance, a description of men who will fix the character and politics throughout the whole territory and which will probably endure to the latest period of time." But these men were men of fixed principles. They did not join a majority, but a majority joined them, and it is for the causes that brought this about that we must look.

The wonderful unanimity shown by the Southern members on July 13, 1787, in favor of the Ordinance is pretty good evidence that they thought Southern interests would be served by its passage. Grayson writing to Monroe twenty-six days after its passage said, "The clause respecting slavery was agreed to by Southern members for the purpose of preventing tobacco and indigo being made on the northwest side of the Ohio as well as for several other political reasons." Grayson's opinion on this point is worthy of great consideration. A Virginian himself, and at the time acting president of Congress, no one could have known better than he did the arguments that moved the Southern members. Nevertheless we think it must have been the

political reasons not specified that had the greatest weight. What they were we can only surmise. The financial condition of the country made it important that no reasonable opportunity should be lost to dispose of public lands, and it is certain that the final consideration of the Ordinance of 1787 was precipitated by the offer of the Ohio Company to purchase a large tract. Grayson also thought that the settlements on the Ohio would shortly extend to the Mississippi, thus forming a barrier between the Indians and Kentucky, "greatly validating the lands on the" south of the Ohio.

There was another political reason that undoubtedly had weight with Grayson, and may have influenced some of his followers, as it could not but affect a question of all-absorbing interest to the South. Between 1784 and 1787 the Southern States were greatly excited over the refusal of Spain to permit of a free navigation of the Mississippi. Their territory extended to that river, and they feared that unless their back settlements were allowed free access to the Gulf of Mexico they would cut loose from the Confederation and seek an alliance with Spain. It was evident that the North and the East would sacrifice the right to navigate the Mississippi for commercial privileges that would only benefit themselves. To overcome their preponderance in Congress the South "neglected no opportunity of increasing the population and importance of the Western territory," and hoped to draw there the inhabitants of New England "whose ungrateful soil . . . favored emigration." By this means they expected in a short time to increase the Southern vote in Congress. That these were their aims in 1786 is asserted by Otto, the French *chargé* at New York, in a letter to Vergennes.¹ Otto came into con-

¹ "The Southern States," wrote Otto, "are not in earnest when they assert that without the navigation of the Mississippi the inhabitants of the interior will seek an outlet by way of the lakes and will throw themselves into the arms of England. They know too well the aversion of their compatriots to that power, and the difficulty of conveying heavy cargoes through the rivers which lead to Canada. But the true motive of this vigorous opposition is to be found in the great preponderance of the Northern States, eager to incline the balance toward their side; the

stant contact with the Southern members, and watched with jealous interest everything touching the relationship of Spain with the United States and reported it to his master. When he wrote of the South endeavoring to increase the population of the Western territory he evidently spoke of the Southwest territory, as no settlements of importance had been made north of the Ohio. If the South was actuated by these motives in 1786 in order to secure the freedom of the Mississippi, and quiet the dissatisfaction in its Western territory, is it not highly probable that it would have followed the same course towards the Northwest in 1787, under the supposition that when that country, watered by the tributaries of the Mississippi, was settled, the inhabitants, no matter where from, would affiliate with them in demanding the right to float with the current of the Mississippi to the sea?

That these reasons influenced Grayson are evident from his speeches made in the Virginia Convention to consider the Federal Constitution, just one year after the passage of the Ordinance of 1787. In them he so clearly echoes the

Southern neglect no opportunity of increasing the population and importance of the Western territory and of drawing thither by degrees the inhabitants of New England, whose ungrateful soil only too much favors emigration. Rhode Island has already suffered considerably from the new establishments of Ohio, and a great number of families daily leave their homes to seek lands more fertile and a less rigorous climate. This emigration doubly enfeebles New England, since on the one hand it deprives her of industrious citizens, and on the other it adds to the population of Southern States. These new territories will gradually form themselves into separate governments; they will have their representatives in Congress, and will augment greatly the mass of the Southern States.

"All these considerations make evident to the South the necessity of promoting by all sorts of means their establishment in the West, and from this point of view a treaty with Spain appears to them most desirable. But if this treaty contains only stipulations in favor of Northern fisheries, far from strengthening themselves against the too great preponderance of the Northern States, they would furnish them with new arms, by increasing their prosperity and the extension of their commerce."—Otto to Vergeunes, September 10, 1786, Bancroft's "History of the Constitution," Vol. II., p. 392.

sentiments expressed in Otto's letter that the conclusion is irresistible that he was Otto's authority. His remarks in the convention were called forth by the fear that under the provision in the Federal Constitution for making treaties the Mississippi would not be as safe as under the Articles of Confederation. "If the Mississippi was yielded to Spain," he said, "the migration to the western country would be stopped and the Northern States would not only retain their inhabitants, but preserve their superiority and influence over those of the South. If matters go on in their present direction there will be a number of new States to the westward—population may become greater in the Southern States—the ten miles square may approach us! This they [the Northern States] must naturally wish to prevent."¹

"Their language [the Eastern States] has been let us prevent any new States from rising in the western world, or they will outvote us. . . . If we do not prevent it, our countrymen will remove to those places instead of going to sea, and we shall receive no particular tribute or advantage from them."²

"If things continue as they now are," he argued, "emigration will continue to that country. The hope that this great national right will be retained, will induce them to go thither. But take away that hope by giving up the Mississippi for twenty-five years and the emigration will cease."³

"When the act of Congress passed respecting the settlement of the western country, and establishing a State there, it passed in a lucky moment.⁴ I was told that that State [Massachusetts] was extremely uneasy about it; and that in order to retain her inhabitants lands in the province of Maine were lowered to the price of one dollar per acre."⁵

"If the Mississippi be shut up emigration will be stopped entirely. There will be no new States formed on the western

¹ Elliot, III., 292.

² Ibid., 343.

³ Ibid., 349.

⁴ But one Eastern State was represented. Dane could not understand why, when such was the case, the anti-slavery clause passed.

⁵ Elliot, III., 350.

waters. This will be a government of seven States. This contest of the Mississippi involves this great national contest; that is whether one part of the continent shall govern the other. The Northern States have the majority and will endeavor to retain it. This is, therefore, a contest for dominion—for empire.”¹

Arguing on the other side that the Mississippi would be safe under the Federal Constitution, George Nicholas said, and in these views Madison coincided: “The people of New England have lately purchased great quantities of land in the western country. Great numbers of them have moved thither. Every one has left his friends, relations, and acquaintances behind him. This will prevent those States from adopting a measure that would so greatly tend to the injury of their friends.”²

Madison’s language was: “Emigrations from some of the Northern States have been lately increased. We may conclude, as has been said by the gentleman on the same side (Mr. Nicholas), that those who emigrate to that country will leave behind them all their friends and connections as advocates for this right. . . . The Western country will be settled from the North as well as the South, and its prosperity will add to the strength and security of the Union.”³

Dr. Cutler says in his journal, under date of July 27, 1787: “The uneasiness of the Kentucky people with respect to the Mississippi was notorious. A revolt of that country from the Union if a war with Spain took place, was universally acknowledged to be highly probable. And most certainly a systematic settlement of that country, conducted by men strongly attached to the Federal government, and composed of young, robust, and hearty laborers, who had no idea of any other than the Federal government, I conceived to be objects worthy of some attention.” This and the effect that settlements north of the Ohio would have on the Indian question were the arguments he used in urging Congress to accede to his terms for the purchase of land.

Now, when we find that in 1786 the South was endeavoring

¹ Elliot, III., 365.

² Ibid., 240, 312.

³ Ibid., 312.

to draw New England men to the Southwest with a view of increasing Southern influence in the confederation and rendering their back settlements more secure; when we find that in 1787 Dr. Cutler was arguing that the settlement of the Northwest would strengthen the bonds that bound the Kentucky settlements to the Union; when we find that in 1788 Grayson, of Virginia, was strenuously arguing that if the Mississippi was closed emigration to the Northwest would cease, and the South would sink into a hopeless minority in Congress; when we remember that Grayson was the moving spirit on the floor of Congress when the Ordinance of 1787 was passed, is it not obvious that the South voted for the Ordinance containing the anti-slavery clause to bring about a settlement of the Mississippi question in accordance with their interests? That this was a concession to Northern and Eastern sentiments is shown by a comparison of the vote on King's motion with that on the Ordinance, but there is no evidence to show that it was the result of a demand. Indeed, as far as the evidence goes, it indicates that the South voluntarily abandoned its position. Dane's letter to King shows that the Ordinance committee did not entertain a positive opinion regarding the anti-slavery clause, or it would have been in its report. It was not until the report had reached a second reading that Dane discovered that the House was "favorably disposed on the subject." The House at that time was composed of the representatives of five Southern and three Northern States, and it does not seem likely that Dane would have drawn such an inference from the opinions of a powerless minority.

The general impression we believe is that the ordinance fostered religion and education in the same effective manner in which it protected the soil from slavery. An examination of the document will show that it contains nothing that would have either encouraged or developed the one or the other without additional legislation. All that is found in it is that "Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools

and the means of education shall forever be encouraged." It also declared that the laws and constitutions of the States rested on the fundamental principles of civil and religious liberty, and to fix these principles as the bases of the laws and constitutions of the proposed States was one of the objects of the Ordinance. The legislative provision for the encouragement of education is found in the Land Ordinance of 1785, and when we remember that in framing it, Congress refused to reserve land for the encouragement of religion, is it not evident that it intentionally omitted to provide for its encouragement in the Ordinance for the government of the entire Northwest territory, and contented itself with the expression of the abstract idea that religion was essential for the good government and happiness of mankind, thus leaving what Dr. Schaff calls "a free church in a free state, or a self-supporting and self-governing Christianity in independent but friendly relations to the civil government?"

The Land Ordinance of 1785 and the record of its formation show that the encouragement of education and religion in the territory by government aid were subjects that had been discussed two years before the Ordinance of 1787 was framed.

The expression of these abstract ideas, however, was made good use of by Dr. Cutler, who succeeded in inducing Congress to extend to the Ohio Company the same provision for the support of schools to which the purchasers under the Ordinance of 1785 were entitled. He also obtained a grant of two townships for the establishment of a university and one lot in each township purchased by the company for the encouragement of religion. These provisions are found in the agreement with the Ohio Company. They formed no part of the organic law and were only extended to one or two other purchasers.

How generally the principles expressed in the Ordinance regarding education, religion, and slavery were entertained by men prominent in Congress is shown by the fragments of their correspondence that has been preserved. "It is cer-

tainly true," wrote Richard Henry Lee in 1784 (a member of the Ordinance Committee of 1787), "that a popular government cannot flourish without virtue in the people, and it is true that knowledge is a principal source of virtue; these facts render the establishment of schools for the instruction of youth a fundamental concern in all free communities."

In 1785, Charles Thomson, the secretary of Congress, said, "If it is or ought to be the object of government not merely to provide for the necessities of the people, but to promote and secure their happiness, and if the felicity or happiness of a people can only be promoted and secured by the exercise of humanity, virtue, justice, and piety, it would be unpardonable in Congress in creating new States, not to guard against the introduction of slavery, which has a direct tendency to the corruption of manners, and every principle of morality or piety."

That Dr. Cutler, in dealing with Congress, made use of the argument that the men he expected to settle in the territory were a class whose education and moral training was such as to entitle them to consideration is hypothetical. His friend Richard Henry Lee, who advocated his proposed purchase in Congress, and who was a member of the Ordinance Committee, wrote to Washington two days after it had passed, "It seemed necessary for the security of property among uninformed and perhaps licentious people, as the greater part who go there are, that a strong-toned government should exist." Lee's information regarding the character of the members of the Ohio Company was without doubt less accurate than Carrington's, but his letter shows that the argument attributed to Dr. Cutler did not convince all of the members of the committee, and justifies the doubt if he ever made it.

With all of this evidence before us it is no easy matter to award to each one who participated in the formation of the Ordinance their share of credit, nor is it likely that the result of any effort made in that direction will be considered as final.

Pickering's proposition in 1783 to erect a new State in the Western territory in which slavery should be unknown, Jefferson's effort to prohibit slavery in any portion of the territory after the year 1800, King's resolution in 1785 to immediately forbid its existence in any of the proposed States show that they voiced a general anti-slavery sentiment that doubtless had gained strength by the discussion of the spirit of liberty that the struggle for independence had called forth. The idea, however, of applying this sentiment to limit slavery to the original States appears to have originated with Pickering and Jefferson, and in view of the results their services should not be forgotten.

To Nathan Dane we would accord a much higher place than that of a scribe. He appears to us to have been rather the intelligent compiler. He was familiar with the action of Congress on territorial affairs. It was on his motion that the committee appointed in 1786, of which Monroe was chairman, for reporting a government for the Western States, and in September he was made a member of that committee. He was also a member of Johnson's committee, and while on it, with the assistance of Pinckney, drafted the report presented on May 9, 1787. In his letter to King, written three days after the passage of the Ordinance, he says he drew it, and that it passed, a few words excepted, as he originally formed it. This would be conclusive regarding authorship were it not for his subsequent statements and the proof we have that much of it was the work of others, which leads to the supposition that he did not intend to claim originality, but construction.

In the seventh volume of his "Abridgment of American Laws," he wrote: "This Ordinance, formed by the author of this work, was framed mainly from the laws of Massachusetts, especially in regard to land titles," etc.

In a note to the ninth volume, 1829, he says, "On the whole, if there be any praise or any blame in the Ordinance, especially in the titles of property and in the permanent parts," those that would not be changed by the admission of a State into the confederation, "it belongs to Massachusetts,

as one of her members formed it." He says he took from Jefferson's resolves in substance the six provisions in the fourth article of compact, and the words of the slave article from Mr. King's motion of 1785. "As to matter, his invention," he says, "furnished the provision respecting impairing of contracts and the Indian security, and some other smaller matters; the residue, no doubt, he selected from existing laws."

In 1830, in a letter to Daniel Webster, he said, "I have never claimed *originality*, except in regard to the clause against impairing contracts, and perhaps the Indian article, part of the third article, including also, religion, morality, knowledge, schools, etc."

In 1831, in writing to John H. Farnham, he endeavored to establish his claim to having first thought, in 1787, of renewing the effort to exclude slavery from the Western territory. He spoke disparagingly of the attempts of Jefferson and King, and said, "When the Ordinance of 1787 was reported to Congress, and under consideration, from what I heard I concluded that a slave article might be adopted, and I moved the article as it is in the Ordinance." Indeed, Dane does not appear to have remembered how much he was indebted to the circumstances and men that surrounded him for what he put in the Ordinance. His claim to some of the very parts that he said were original are easily invalidated.

The Indian article had really nothing new in it. The land ordinance provided for the sale of lands only after they had been purchased from the Indians, and, more than a century before, William Penn had proposed to enact laws for the protection of the Indians. Pelatiah Webster, in 1781, writing regarding the Western lands, pointed out the importance of cultivating a "good and friendly correspondence with the Indian natives, by a careful practice of justice and benevolence towards them."

It has been customary to attribute to Dane the clause against impairing contracts, and it has been suggested that its necessity was made evident to him by Shay's Rebellion in

Massachusetts; but Mr. Bancroft calls attention to the fact that views similar to his were held by his colleague, Richard Henry Lee, and it is probable that the honor should be divided. It is a very serious obstacle to the acceptance of Dane's statements that he should have said that he originated the clauses relating to religion, morality, knowledge, schools, etc., while we know that these suggestions had already been considered by Congress. Nevertheless, as we have said, we believe him to be entitled to a higher place than that of a scribe. He does not seem to have originated, but to have written with a well-stored mind, and to have drawn from his surroundings what was best suited to the purpose. To us it appears that he had more to do with the framing of the Ordinance than any other man.

In speaking of the passage of the amendment prohibiting slavery, Mr. Bancroft says, "Everything points to Grayson as the immediate cause of the tranquil spirit of disinterested statesmanship which took possession of every Southern man in the Assembly." That he possessed great influence in Congress, and exerted it to the utmost in favor of the Ohio purchase, is attested by Cutler's diary. Knowing his sentiments, we believe that he favored the Ordinance also, as by doing so he would have advanced two cherished objects, the limitation of slavery and the freedom of the Mississippi River. In 1819, Taylor, of New York, in a debate on the admission of Missouri, quoted Hugh Nelson, of Virginia, as having said that in the convention of 1787 Grayson drew the Ordinance excluding slavery from the Northwest territory. While it is probable that the use of the word convention in place of Congress was a *lapsus linguæ* on the part of either Nelson or Taylor, the statement was evidently a loose one that cannot be considered when it is confronted with the facts that Grayson was not on the Ordinance committee, and that Dane, three days after it passed, said that he drew it. That Grayson was in any sense of the word the author of the clause prohibiting slavery seems impossible. The language is that of King's motion of 1785. Dane says he copied it from there, and the original is in Dane's hand-

writing. The tradition, however, is of interest, as it connects Grayson's name with the clause, and may have grown out of the zeal he took in securing the passage of the Ordinance.

Manasseh Cutler undoubtedly suggested, at an opportune moment, that certain features be added to the Ordinance that he failed to find in it when it was submitted to him for criticism. What they were there is no contemporaneous evidence to show, but the entry in his diary that after the Ordinance had passed he found all of his amendments, but one, had been adopted is proof that they are there. Heresay and after-evidence affirm positively that these were the parts relating to religion, education, and slavery, and Dr. Cutler's successful efforts to obtain from Congress land grants for the support of the first two uphold the assertion. That he suggested the anti-slavery clause rests on tradition alone. There was certainly nothing original regarding the suggestions, in connection with Territorial government, and the credit of having recalled them at a critical time is all that can be awarded to him. With the suggestions that his diary says he made, we believe the services of Dr. Cutler in the formation of the Ordinance began and ended. There is nothing to show that when he came to New York he expected to have the Ordinance submitted to him, or that he had prepared anything to insert in it; nothing to show that having made the suggestions he ever attempted to force their adoption on Congress. The entry in his diary appears to cover all of his transactions in the matter with Congress,—namely, that a copy of the Ordinance was submitted to him with permission to make remarks and propose amendments; that he did so, returned it, and left New York for Philadelphia.

The fact is, the Ordinance was a political growth. Step by step its development can be traced in the proceedings of Congress. Monroe's plan, imperfect as it was in form when reported, provided for a more advanced state of civilization than Jefferson's, and in some respects was an improvement on it. Johnson's ordinance was an elaboration of Monroe's plan. The Ordinance of 1787 contained the most important

features of each, together with suggestions that had been made from time to time, and what could be found in the constitutions and laws of the States. There is no necessity of going outside of Congressional circles to account for its production or passage. It was formed in an era of constitution-making. The separation of the colonies from the mother-country had made the people familiar with the principles of civil liberty. Between 1776 and 1787 every one of the States, with the exception of Connecticut and Rhode Island, had formed new constitutions for their government. There was hardly a man in public life who had not assisted in some way in their adoption, and who was not familiar with their principles. Hundreds of essays on government were made public by the newspapers or in pamphlet form. The political atmosphere was impregnated with the subject, and it is doubtful if there ever was a time when the people of a country were more familiar with the principles of government than were the inhabitants of the United States in 1787. To announce what at any other time might be looked upon as an original thought appeared only to echo an axiom. The discussion brought forth legitimate results, and while Congress was creating the Ordinance of 1787, the representatives of the States, assembled in another city, were engaged in the formation of the Federal Constitution.

[For copies of original papers and letters consulted in preparing the above, the writer is indebted to Dr. Austin Scott, of Rutgers College, Mr. Theodore Dwight, Mr. Frederick Bancroft, and Mr. S. M. Hamilton, of the Department of State.]



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